

STATE OF NEBRASKA

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June 18, 2013

Patrick J. Sullivan
Bellevue City Attorney
Adams & Sullivan, P.C., L.L.O, Attorneys at Law
1246 Golden Gate Drive, Ste. 1
Papillion, Nebraska 68046-2843

Re: Bellevue Ward I Vacancy
Legal Opinion Request to Secretary of State

Dear Mr. Sullivan,

This letter is in response to your request dated June 11, 2013 for an interpretation of certain statutes addressing the filling of a vacancy on the city council for cities of the first class. Specifically you have asked if Neb. Rev. Stat. 32-568(3) stands alone as the process for filling a vacancy or does the process in Neb. Rev. Stat. 32-569(1) also apply. Secondly, you have asked if Neb. Rev. Stat. 32-569(2) requires separate approval of the mayor and approval by the council for a special election in lieu of an appointment.

You provided a legal opinion to the Mayor and to the City Council of Bellevue, but that opinion has not resolved the dispute as to the applicable statutes as well as the interpretation of relevant statutes. Since your legal opinion has not yet brought about a resolution of the dispute, and the fact that the City Council has now voted to officially solicit on behalf of the City of Bellevue an opinion from me as Secretary of State, to which you have had no objection, I have decided to do so in the hopes of bringing this deadlock to a closure.

Applicability of 32-569(1)

Bellevue is a city of the first class. Neb. Rev. Stat. Section 16-217 provides that a vacancy on the city council shall be filled as provided in section 32-568. Currently, 32-568 consists of eight subsections addressing various classes of municipalities as well as differing forms of organization such as a commission form and city manager form of municipal government. Subsection (3) refers to cities of the first class such as Bellevue and provides that any vacancy on

the council (resulting from causes other than expiration of the term) shall be filled by appointment by the mayor with the consent of the city council.

You have asked whether 32-568(3) stands alone as the procedure to appoint the vacancy or does Neb. Rev. Stat. 32-569(1) also apply. It is my opinion that 32-569(1) does not apply to a city of the first class for several reasons.

The first sentence of 32-569(1)(a) provides, "Except as otherwise provided in subsection (2) or (3) of this section or section 32-568, vacancies in city and village elected offices shall be filled by the mayor and council or board of trustees for the balance of the unexpired term." This language clearly provides an exception to 32-569(1) for vacancies covered by section 32-568. Although some of the vacancy procedures in 32-568 reference 32-569, the vacancy procedure for cities of the first class does not. Further, Neb. Rev. Stat. 16-217 does not direct the reader to review 32-569 in conjunction with 32-568 to determine how to fill a vacancy on the city council for a city of the first class; instead, 16-217 plainly identifies 32-568 as the guiding section to determine how to fill a vacancy on the city council for such cities.

Applicability of 32-569(2)

Your second question was whether the word "and" between the words "mayor" and "council" require separate approval of the mayor and approval by the council of a special election in lieu of an appointment.

Section 32-569(2) provides "The mayor and council or chairperson and board of trustees may, in lieu of filling a vacancy in a city or village elected office as provided in subsection (1) of this section or subsection (3) of section 32-568, call a special city election to fill such vacancy."

The plain meaning of the use of the conjunction "and" would indicate that both parties mentioned (mayor and council in this case) are involved in the calling of a special election. I believe both parties must agree to the calling of a special election pursuant to 32-569(2).

Conclusion

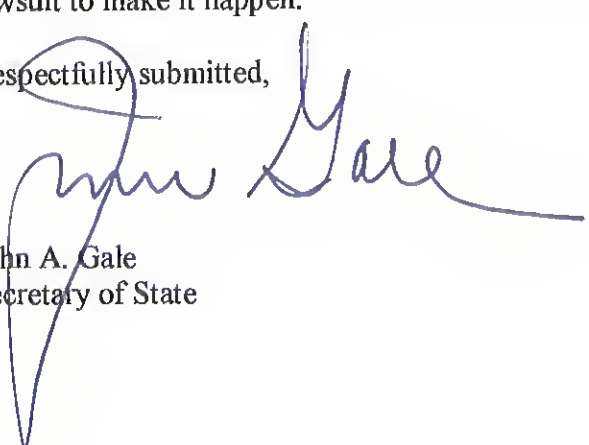
Having made the decision to provide an interpretation regarding the above issues arising from the council vacancy in Bellevue, I feel obligated to provide some additional comments on the situation. Although I strongly considered declining to issue an interpretation on this matter, I was concerned that my declination would result in more political deadlock on filling the council vacancy and result in a great disservice to the citizens of Bellevue's Ward 1.

Ward I lost its elected representative due to a resignation creating a vacancy in the city council representation for that Ward. In effect, their votes were canceled. The Mayor can appoint with the "consent" of a majority (four) of the city council a person to fill the vacancy for the unexpired term. That hasn't happened. Yet the process of government goes on, including matters of real substance, without Ward I being represented. A representative democracy should abhor a vacancy. To be a "government of the people, by the people, and for the people", the people must have a voice through their chosen representative, either by election or by appointment. So,

filling a vacancy must be a high priority to assure a balanced government with the voices of all citizens equally represented. If it takes a special election, then the Mayor and City Council should expeditiously move forward with that special election without the need for a citizen's lawsuit to make it happen.

Respectfully submitted,

John A. Gale
Secretary of State

A handwritten signature in blue ink, appearing to read "John A. Gale". The signature is fluid and cursive, with a large initial "J" and "A".